



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,328	04/26/2002	Klaus David Gradischnig	112740-391	6260

29177 7590 02/15/2006

BELL, BOYD & LLOYD, LLC  
P. O. BOX 1135  
CHICAGO, IL 60690-1135

EXAMINER

SCUDERI, PHILIP S

ART UNIT PAPER NUMBER

2153

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/019,328	<b>Applicant(s)</b> GRADISCHNIG ET AL.	
	<b>Examiner</b> Philip S. Scuderi	<b>Art Unit</b> 2153	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4, 6, 9 and 10 is/are rejected.
- 7) ☒ Claim(s) 5, 7 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 April 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

This Office action is in response to applicant's amendment filed on 31 October 2005.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Applicant has only submitted a single drawing that fails to show at least a protocol device, a current information state, an updated information state, a USTAT-PDU, a list element, and a removed bit of protocol information.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Response to Arguments***

The examiner agrees that it was unreasonable to treat limitations outside the preamble of the claims as intended use and thanks applicant for setting the record straight. However, Applicant's arguments that Henderson does not teach every element of the independent claim have been considered and are not persuasive. See the rejection below.

This Office action is non-final because the position taken in the last Office action has been withdrawn and because the examiner has introduced new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4-6, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Design Principals and analysis of SSCOP: an new ATM adaptation layer protocol, by Thomas Henderson (hereinafter "Henderson").

Regarding claim 4, Henderson teaches a protocol device in a protocol system for transmitting messages (figure 2; a transmitter), comprising:

a part that determines, based on protocol information which is contained in a control message received by the protocol device whether the control message contains information that is newer than a current information state in the protocol device (page 49, column 2, lines 1-6;

Art Unit: 2153

determining whether the STAT message contains current information based on the poll sequence number

a part that updates the information state based on the determination (page 49, column 1, lines 7-12; using the STAT message for its intended purpose).

Regarding claim 5, “numbering” received control messages reads on merely storing the messages in memory (assigning a memory address number), which is clearly inherent.

Regarding claim 6, Henderson teaches that the control messages are for flow control (page 49, column 1, lines 7-12; the control messages are STAT messages).

Regarding claim 9, Henderson teaches that the control message is a STAT-PDU (page 49, column 1, lines 7-12).

Regarding claim 10, Henderson teaches that a last list element of the control message is a removed bit of protocol information, and is used as a parameter when the control message does not contain a list element (page 49, column 1, lines 12-16; when the control message is a USTAT message).

Claims 4-7 and 9 are rejected under 35 U.S.C. 102 as being anticipated by Admitted Prior Art (hereinafter “APA”). See MPEP § 2129.

Regarding claim 4, APA teaches a protocol device in a protocol system for transmitting messages, comprising:

a part that determines, based on protocol information which is contained in a control message received by the protocol device, whether the control message contains information that is newer than a current information state in the protocol device (specification, page 1, lines 25-30; “packets which contain only monitoring information are normally not successfully numbered, at least packets with certain classes of monitoring information” implies that at least some packets with certain classes are numbered); and

a part that updates the information state based on the determination (specification, page 1, lines 25-30; based on packet numbers).

Regarding claim 5, “numbering” received control messages reads on merely storing the messages in memory (assigning a memory address number), which is clearly inherent.

Regarding claim 6, APA teaches that the control messages are for flow control (specification, page 1, lines 25-30).

Regarding claim 7, APA teaches that the part for determining stores at least part of the control message in place of the current information that is newer than a current information state in the protocol device (specification, page 1, lines 25-30).

Regarding claim 9, APA teaches that the control message is a STAT-PDU (specification, page 1, lines 25-30).

Claims 4, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by A.S. Tannenbaum, Computer Networks, Prentice-Hall, 1996 (hereinafter "Tannenbaum").

Regarding claim 4, in the arguments filed on 03 June 2005 applicants argued that "Tannenbaum keeps track of updates to the control information simply by relying on the numbering of the user data messages (page 203)" and that "[t]he present device claims, however recite separate control messages". The examiner respectfully disagrees with the assertion that the present claims recite separate control messages. Since the numbered user data messages carry piggybacked control information (pages 202-203) they can reasonably be considered control messages. Accordingly, Tannenbaum anticipates the claimed invention.

Regarding claim 6, Tannenbaum teaches that the messages are for flow control (page 202; acknowledgement messages).

Regarding claim 7, Tannenbaum teaches storing at least part of the control message in place of the control message in place of the current information that is newer than a current information state in the protocol device (page 203; updating the receiving window).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2153

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson in view of Tannenbaum.

Regarding claim 8, Henderson teaches that “for use of SSCOP on a connectionless network, a relaxation of the rules against unnecessary retransmission of frames and a change in retransmission procedures to account for lack of sequence integrity among control and data frames are the necessary modifications” (page 51, column 1, lines 11-16). Given the teachings of Henderson, it would have been obvious to one of ordinary skill in the art to look outside the teachings of Henderson in order to account for lack of sequence integrity among control and data frames.

In a similar problem solving area, Tannenbaum teaches a method for accounting for a lack of sequence integrity among control and data frames, wherein control frames are piggybacked on data frames (page 203). Given the teachings of Tannenbaum, it would have been obvious to one of ordinary skill in the art to account for the lack of sequence integrity among control and data frames by piggybacking the control frames on data frames, thereby accounting for the lack of sequence integrity among control and data frames disclosed by Henderson.

The combination of Henderson and Tannenbaum reads on the claims for the same reasons that Tannenbaum reads on claim 4 (see the rejection above) and because SSCOP on a connectionless network appears to correspond to applicant’s recited MSSCOP protocol (specification, page 4, line 25 – page 5, line 4).




***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip S. Scuderi whose telephone number is (571) 272-5865. The examiner can normally be reached on Monday-Friday 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PSS

  
GLENTON B. BURGESS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100